The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Citrech, Inc.

File: B-227958

Date: November 16, 1987

DIGEST

The General Accounting Office will not object to the contracting agency's technical judgment that necessary size and performance criteria set forth in the specifications are not impossible to meet absent clear and convincing evidence of impossibility, since the responsibility for drafting proper specifications is the contracting agency's.

DECISION

Citrech, Inc., protests the specifications in invitation for bids (IFB) No. 87-80, a total small business set-aside issued by the Centers for Disease Control (CDC), Department of Health and Human Services, to replace five cooling towers at CDC's Atlanta facilities. Citrech contends that certain of the specifications unduly restrict competition in that they are impossible to meet and that other specifications overstate CDC's needs.

We deny the protest in part and dismiss it in part.

The invitation solicited bids for demolishing the existing cooling towers and furnishing and constructing five new cooling towers at CDC's Atlanta facilities. The specifications require installation of towers that are Ceramic Cooling Tower Co., Permalite Model No. PL-625-75B, or approved equal. Two of the cooling towers are 3,680 gallons per minute (GPM) units and the other three cooling towers are 1,800 GPM units. Citrech and its intended cooling tower supplier, GEA Power Cooling Systems, Inc., contend that it is impossible for any contractor to meet the performance requirement that each 3,680 GPM cooling tower deliver water cooled to 85 degrees fahrenheit, because of the length and width limitations and the fan motor size imposed by the IFB's specifications and drawings. Citrech and GEA assert that the problem can be solved by increasing either the length or width of the cooling towers, but that increasing the fan motor size will not cure the defect.

However, as the cooling towers are to be installed on existing buildings, the specifications and drawings provide length and width limits which, according to Citrech and GEA, circumscribe the contractor's ability to redesign the size of the cooling tower's surface area. GEA calculates that the width of the towers would have to be about 25 percent greater than the 25 feet and 1/4 inch width presently allowed, or the length would have to be increased from the 48 feet presently specified to 58 feet.

In response to Citrech's protest, the agency had its Engineering Services Office examine the drawings and specifications, as well as literature and test reports prepared by the cooling tower manufacturer named in the IFB, Ceramic Cooling Tower. The agency reports that, while Citrech and GEA admit that they cannot make a cooling tower that will cool water to the required temperature at the required rate given the architectural limitations imposed by the existing buildings, there is at least one manufacturer--Ceramic Cooling Tower--and possibly others that can. The agency has submitted a list of installations, both government and private, that have purchased Series 1000 Permalite cooling towers from Ceramic Cooling Tower to show that the required cooling and water flow rate capabilities have been met at other places using Ceramic Cooling Tower products. The agency also has submitted a Ceramic Cooling Tower acceptance test report to show that one of its cooling towers installed on a Federal Aviation Administration (FAA) building was able to perform at the specified capacity. Finally, CDC has provided our Office with a letter it received from Ceramic Cooling Tower in which the firm states that the cooling towers it manufactures will exceed the specification requirements at the CDC facilities. Ceramic Cooling Tower asserts in the letter that it will be able to meet the CDC requirements due to certain unique design features it has developed which allow it to use smaller towers that are more efficient than towers using older technology.

The responsibility for drafting proper specifications that reflect the government's needs is the contracting agency's. Our Office therefore will not substitute its judgment for the contracting agency's in a situation such as this unless there is clear and convincing evidence that the specifications are in fact impossible to meet or otherwisely unduly restrict competition. Cardion Electronics, B-218566, Aug. 15, 1985, 85-2 C.P.D. ¶ 172; ConDiesel Mobile Equipment Division, B-201568, Sept. 29, 1982, 82-2 C.P.D. ¶ 294.

Citrech criticizes CDC's use of the Ceramic Cooling Tower acceptance report as support for the contracting agency's argument that at least one offeror can fulfill the

requirements and that they are not, therefore, impossible to meet. Among other things, Citrech argues that this report was not issued by, and the tests witnessed by, an independent party, but rather, the tests were conducted and the report written by Ceramic Cooling Tower itself. The protester also points out several other alleged improprieties in the testing procedures and that the cooling tower tested was not even the same size as the cooling towers being purchased under the present invitation. Thus, the protester contends, the test results are at best irrelevant and the validity of the data therefore is doubtful.

In its protest, Citrech focuses not on the legitimacy of CDC's need for the 3,680 GPM tower performance requirements, but on the alleged impossibility of meeting them without also permitting some flexibility with respect to redesign. In our opinion, Citrech has not carried its burden of showing that the specifications and drawings prevent an offeror from meeting the water rate and cooling performance standards. Admittedly, the FAA cooling tower acceptance report was for a smaller capacity cooling tower and the tests were conducted by the tower manufacturer rather than a neutral party. Even assuming for the sake of argument that the tests may have been flawed to some degree, this acceptance test was but one piece of information that CDC's engineers evaluated before determining that the present performance standards are not impossible to meet given the size restrictions imposed by the existing buildings. As noted above, CDC also considered a lengthy list of installations using Ceramic Cooling Tower products, and a statement from Ceramic Cooling Tower that it could in fact meet CDC's requirements with newly developed design features. In essence, all of this information, plus certain descriptive literature provided to CDC by Ceramic Cooling Tower on its full line of towers, confirmed CDC's belief that its specifications were valid and could be performed.

Concerning Citrech's proposed modifications to the length and width requirements, the agency points out that the cooling towers are to replace old towers on existing buildings. The agency reports that a major factor in drafting the specifications was to minimize structural alterations to the buildings. CDC engineers reexamined the specifications and drawings in light of Citrech's proposed modifications and again concluded that the cooling towers simply cannot be enlarged to the extent proposed. In part, the cooling tower dimensions have been dictated because only that part of the roof that has the necessary structural supports can be used to support the cooling towers. We note in this regard that Citrech admits that increasing the length of the tower as it proposes would cause each tower to

extend beyond the steel-framed portion of the roof. Thus, the maximum dimensions of the cooling towers are 26 feet wide and 48 feet long--far smaller than the dimensions proposed by Citrech. Furthermore, it was apparent from statements made by CDC personnel at a conference in our Office on this protest that architectural and aesthetic concerns were also considered by CDC in determining the maximum allowable dimensions.

In sum, we have no reason to conclude that CDC's statement of its minimum needs as set forth in the IFB is not reasonable, and we cannot conclude, as Citrech urges, that the specifications and performance standards are impossible to meet. Accordingly, Citrech's protest is denied on this issue.

In view of our conclusion that the size and performance standards are reasonably based, we will not consider the allegations that the specifications unduly restrict competition in several other areas. The protester states that it intends to use only GEA as its supplier of cooling towers, and both the protester and GEA admit that they cannot provide a cooling tower that will meet the size and performance criteria set out in the specifications. Therefore, the protester is precluded from offering a cooling tower that will conform to the specifications. See The Trane Co., B-216449, Mar. 13, 1985, 85-1 C.P.D. ¶ 306.

The protest is denied in part and dismissed in part.

for James F. Hinchman
General Counsel